

LAW OFFICES
MAZUR & KITTEL, PLLC
30665 NORTHWESTERN HIGHWAY
SUITE 175
FARMINGTON HILLS, MI 48334

TIN 42-1594785
TELEPHONE (248) 432-8000
FAX (248) 432-8010
TOLL FREE 800-990-6380

JOHN I. KITTEL (MI, OH, WV, FL)
MICHAEL S. MAZUR (MI)
BRYAN M. FRINK (MI, OH)
BRIAN A. CALANDRA (MI, WV)

October 13, 2009
(via fax and E-mail)

OFFICES
CHARLESTON, WV
CLEVELAND, OH
ROSEVILLE, MI
TOLEDO, OH

Representative Mark S. Meadows
Michigan House of Representatives
Post Office Box 30014
Lansing, MI 48909

RE: House Bill 5167

Dear Representative Meadows:

I am writing in opposition to House Bill No. 5167 "Limitation of Successor Asbestos-Related Liability." I believe that the defeat of this bill is important to the well-being of Michigan victims of asbestos exposure and their families. Asbestos exposure causes malignant mesothelioma, lung cancer, colon cancer, stomach cancer, laryngeal cancer, and asbestosis. Malignant mesothelioma is terminal without treatment or cure.

The proposed legislation is nothing more than a liability bailout for asbestos companies. Provisions of the bill cap asbestos liability of *any company that can be considered a "successor" corporation*, to the amount equal to the gross assets of the company being acquired at the time of the merger. This cap will apply, regardless of how many employees, customers or bystanders have been killed or disabled by activities of the original corporation or its successors. Further, the bill caps the liabilities of companies who knowingly purchased such asbestos liabilities.

Proponents of this bill may claim that this is just a bill to help the certain companies (such as Pennsylvania Corporation, Crown Cork & Seal which has been pushing this legislation around the country) which claim to have been adversely affected by asbestos lawsuits. Not true: This is a broad sweeping bill that applies to any corporation that became a "successor" before 1972 *"or is any of that successor corporation's successors."* According to the provision, the cap applies to any corporation that has asbestos liabilities as the "result of or in connection with a merger or

Page Two
October 13, 2009

consolidation, or the plan of merger or consolidation related to the merger or consolidation, with or into another corporation or that are related in any way to asbestos claims based on the exercise of control or the ownership of stock of the corporation before the merger or consolidation."

The proponents of the bill want you to believe they deserve this special treatment because they were never in the asbestos business. But, Michigan law recognizes that a successor is responsible for the bad acts of any company that it buys, otherwise all companies would simply reorganize after causing harm in order to avoid ever being held accountable. For instance, after Crown Cork bought Mundet Cork, it continued in the asbestos business for several months, retaining the facilities, products and employees of the predecessor corporation. Having continued the asbestos business, and then profiting from its sale, Crown Cork and many other companies like it now want to evade responsibility for the terminal disease its products caused.

The proponents of the bill want you to believe they didn't know "back then" that asbestos was dangerous. Not true: asbestos-related lung disease was well documented in the early 1900s; the link to lung cancer by the 1940s; and mesothelioma in the 1950s. Asbestos' dangers were so well known that OSHA issued its first emergency standard to control asbestos exposures immediately after the agency was first established in 1971. Indeed, asbestos claims were pending against Mundet Cork at the time it was acquired by Crown, Cork & Seal.

Perhaps they want you to believe they didn't know they were acquiring liability in these mergers. Not true (or else incompetent): corporate officers have a duty to examine the books and know what they are acquiring. Some acquisitions likely took place because asbestos liability depressed the book value, making the deal a bargain.

Proponents of this bill have operated for decades: compensating executives, paying dividends, growing the business, opening new markets, and generally enjoying global economic expansion. Now they want you to wipe out their obligations to people who have been suffering and dying from asbestos exposure as a result of using their products.

Page Three
October 13, 2009

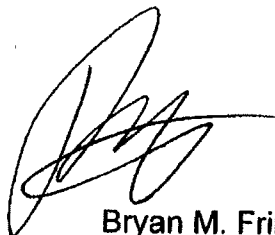
The majority of these companies, including Crown Cork are large, profitable corporations that do not need help or special treatment. Why should Michigan provide special treatment for Crown, Cork or others like it? Protecting its assets from liability will not benefit Michigan. Preventing Michigan asbestos victims from recovering compensation will have an adverse economic impact locally.

A final note: the severability clause in the provision suggests the authors are aware this bill may be unconstitutional. The provision retroactively restricts substantive rights, not only of plaintiffs, but also of defendant corporations not covered by the bill.

Very Truly Yours,



John I. Kittel



Bryan M. Frink

Cc (via e-mail):

- House Judiciary Committee Members: Ellen Cogen Lipton; Lisa Brown; Bob Constan; Marc R. Corriveau; Andy Coulouris; Andrew J. Kandrevas; Bettie Cook Scott; Rebekah Warren; Tonya Schuitmaker; Justin Amash; Joseph Haveman; Rick Jones; Eileen Kowall; and Tony Rocca
- Majority Floor Leader: Kathy Angerer
- Vicki Barnett (Farmington Hills)